

**TOWN OF ODESSA
DELAWARE**

**MINUTES OF SPECIAL TOWN COUNCIL MEETING
APRIL 12, 2005**

Those present at 7 PM:

Acting Mayor Kathy Harvey
Council Member Jacqueline Fox
Council Member John Raudenbush

Treasurer James Grant

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1. The meeting was called to order and began with the pledge of allegiance.
 2. Representative Richard C. Cathcart stated that the reason he was involved with the temporary government of the Town of Odessa was because he did not want to see the town struggle any longer then it already had. He felt it was very disappointing to see the continued controversies going on and wanted to help get it back to doing the business of the local government.

Representative Cathcart explained that he had met with several attorneys the previous Thursday, including attorneys from the Attorney General's Office, as well as the attorney for the House of Representatives and for the Senate, and requested a written opinion to answer two specific questions:

1. Were the two council members validly sworn in at the April 4, 2005 Council Meeting; and
2. Whether and how the two-member town Council could take action to fill its vacancies in the absence of a quorum as set forth in the Town Charter.

It was noted at this time that Council Member John Raudenbush had withdrawn his resignation of April 4, 2005, so that there were three members of Council present.

Mr. Cathcart proceeded to read into the record an opinion dated April 12, 2005, regarding "Vacancies on Odessa Town Council/Town Charter, rendered by Stephani J. Ballard, Deputy Attorney General, copied to and concurred by Carl C. Danberg, Chief Deputy, and Malcolm S. Cobin, State Solicitor, attached hereto and made a part of these minutes by reference, to be known as Attachment A.

As to question one, the opinion noted that at a regularly scheduled Town Council meeting on April 4, 2005, in accordance with §7.1 of the Charter, Mr. Raudenbush, the council member who had not resigned, swore in the two council members-elect. The opinion notes that "The swearing-in was proper under Town Charter §7.1 which provides that newly elected officers must be 'duly sworn' prior to assuming the duties of their respective offices. The oath shall be administered by a notary public, justice of the

peace, town alderman or by one of the holdover Town Council members” which, in this case, was Council Member John Raudenbush. It was further noted in the opinion that there was no requirement in the Charter that the swearing-in had to take place at a council meeting or with a quorum present and that the act of swearing-in, as described in §7.1 of the Charter, is not an act of council itself, but an act of “one of the holdover council members.”

As to question two, the opinion deals with the vacancies on council apart from the vacancy of the mayor’s position. Charter §7.71 provides that vacancies can occur upon death, incapacitation, resignation, movement from the town or the forfeiture of office for any elected town official. The opinion notes that in this case, vacancies in the office of the mayor and two council members were created by resignation and, in one other case, movement from the town. One additional seat was vacated by virtue of an expired term, with that councilman (Mr. Unruh) stating that he did not wish to run again. Specifically, §7.8.2 addresses procedures for filling vacancies in the office of any council member other than the mayor, i.e., such vacancies shall be filled for the remainder of the unexpired term “at the next municipal election,” unless the vacancy occurs more than 90 days prior to the next annual municipal election, in which case, new members shall be appointed by “a majority vote of the remaining members.”

The opinion goes on to say that the general quorum requirement of §7.10.5 must be read in the context of the entire Charter, including the specific provisions regarding filling vacancies at §7.8. The language of §7.8.2 shows that the Charter drafters intended to grant the power of appointment to the remaining council member(s), whether or not their number rises to the level of a quorum. It provides that the Town Council may ‘by a majority vote of the remaining members” appoint persons to fill council vacancies. The remaining members in this case of multiple vacancies could be anywhere from one to three.

Turning to the vacant office of the Mayor, the Charter sets forth specific procedures to be followed in filling this position. The Charter provides for the appointment of an acting mayor until such time as a new mayor is elected and is installed in office. The vacancy is then to be filled for the remainder of the unexpired term. However, if the vacancy occurs more than 120 days from the occurrence of the next annual election, the town council “shall, within 24 hours of notice of the vacancy, announce the date and time for a special election” which has been done.

The opinion concludes by saying that “as a practical matter, once the two sitting members fill one of the council vacancies, they will have a quorum of three, and therefore the unquestioned ability to conduct all council business, including actions under §7.8.1.”

3. **ROLL CALL** was taken at this time. Council Members Raudenbush, Fox, and Harvey, and Treasurer Jim Grant were in attendance.

4. **APPOINTMENT OF VACANT COUNCIL SEAT(S).**

Mr. Grant informed Council that his wife, Karlyn Grant, had expressed an interest in sitting on Council. Mr. Raudenbush announced that there were three interested parties for two vacancies.

Ms. Fox suggested that this be considered at the next meeting in order to allow all interested parties to confirm their interest in serving.

MOTION BY MS. FOX, SECONDED BY MS. HARVEY: THAT THIS ITEM BE TABLED UNTIL THE NEXT MEETING, SCHEDULED FOR May 2, 2005.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.
Nay – 0.

5. ACTION ON THE VACANT MAYOR SEAT.

MOTION BY MS. FOX, SECONDED BY MR. RAUDENBUSH: THAT KATHY HARVEY BE APPOINTED AS ACTING MAYOR UNTIL THE SEAT IS FILLED BY AN ELECTION.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.
Nay – 0.

6. SETTING DATE OF SPECIAL ELECTION.

Mayor Harvey read a resignation letter from Mayor Rebecca Tulloch, effective April 4, 2005.

MOTION BY MS. FOX, SECONDED BY MR. RAUDENBUSH: THAT MAYOR TULLOCH'S RESIGNATION BE ACCEPTED.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.
Nay – 0.

MOTION BY MS. FOX, SECONDED BY MR. RAUDENBUSH: THAT A SPECIAL ELECTION BE SCHEDULED FOR THURSDAY, JUNE 2, 2005, AT THE ODESSA FIRE HALL, BETWEEN THE HOURS OF NOON AND 8 PM IN ORDER TO ELECT A MAYOR TO SERVE THE REMAINDER OF A TWO YEAR TERM.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.
Nay – 0.

It was noted by Mayor Harvey that the deadline for filing for mayor would be May 3, 2005.

7. DELAWARE STATE POLICE REPORT.

The report was received by Council.

Ms. Fox stated that it was brought to her attention that there was a sexual offender's registry on the State Police website. Without being specific, Ms. Fox pointed out that anyone could look up The Town of Odessa on that site to check to see if there were any registered sex offenders living in the community.

8. APPROVAL OF MINUTES.

MOTION BY MS. FOX, SECONDED BY MR. RAUDENBUSH: THAT THE FEBRUARY 7, 2005 MINUTES BE APPROVED AS RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.

Nay – 0.

9. MINUTES OF MARCH 7, 2005.

Ms. Fox stated that in addition to several typographical errors in the minutes, she made a statement about missing parks money to which Mayor Tulloch responded by asking if information was going to be provided to Council regarding the actual amount that was missing. Ms. Fox responded to the mayor by saying that when she heard a vote from Council as to what they wanted done, she would provide that information. Ms. Fox requested that this be made a part of the March 7, 2005 minutes.

MOTION BY MS. FOX, SECONDED BY MR. RAUDENBUSH: THAT THE MINUTES OF MARCH 7, 2005, BE TABLED UNTIL THE NEXT MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.

Nay – 0.

Mayor Harvey noted that the minutes for March 14 and April 4 would be placed on the next agenda for approval.

10. CORRESPONDENCE.

Mayor Harvey read resignation letters from the following:

Roger A. Akin, Town Attorney; Carol Coleman, Historic Commission; Jana Mason, Historic Commission; Janet Butler, Historic Commission; Harvey Smith, Board of Adjustment; Carol Coleman, Planning Commission; Mary Jane Pollard, Tree Commission; Ed Pollard, Planning Commission; Ed Pollard, Tree Commission; Christine Whitehead, Planning Commission; Carol Coleman, Board of Elections; and, William Allen, Council Member.

11. TREASURER'S REPORT AS OF MARCH 31, 2005

The Treasurer's Report was read by Mr. Grant with a copy attached hereto as Attachment B.

MOTION BY MR. RAUDENBUSH, SECONDED BY MS. FOX: THAT THE TREASURER'S REPORT AS OF MARCH 31, 2005 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 3 TO 0.

Aye – Raudenbush, Fox, Harvey.

Nay – 0.

12. COMMISSION REPORTS:

Parks – The report was given by Ms. Fox and no action was necessary.

Historic Commission – Ms. Fox read a report from the Historic Commission, a copy of which has been filed in the Town Secretary's Office. It was noted that all members of the Historic Commission have resigned.

The report was received and it was suggested that the action requested in the report be placed on a workshop agenda or on the next meeting agenda.

Ms. Harvey pointed out that the Planning Commission had only one member left, the Board of Adjustment was sitting with two members, and three on Trees.

13. OLD BUSINESS:

*Old Academy Roof Status: Ms. Harvey stated that during two torrential rains, the roof has not leaked. The contractor was not asking for any additional monies and would stay on the job until completion which has been scheduled for May 22. Mr. Grant felt that the Town should seriously look at the replacement of the roof with cedar shingles at a guesstimate of \$25,000. Funds were available out of the Real Estate Transfer Tax.

MOTION BY MS. FOX, SECONDED BY MR. RAUDENBUSH: THAT THE MAYOR BE AUTHORIZED TO SEND A LETTER TO MAX WALLACE GIVING HIM SIX WEEKS TO COMPLETE THE CONTRACT ON THE OLD ACADEMY.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0

Aye – Raudenbush, Fox, Harvey.

Nay – 0.

It was agreed to place the Old Academy in the budget as a capital expenditure to replace the roof as noted above and to discuss this at the budget workshop.

14. *Comprehensive Plan Update: Ms. Harvey mentioned that she had spoken to Martin Wollaston from the University of Delaware and since there was no Planning Commission to review this, Mr. Wollaston agreed to send the maps so that the citizens could review them. She stated that Mr. Wollaston was contracted to attend six meetings, two of which have already been used, two of the remaining four are for his attendance at any state review meetings and public hearings prior to that, if necessary. Mr. Wollaston felt it was up to the Town of Odessa to decide what to do with the Comprehensive Plan and they would wait to hear from the town.

Since there were very few members of the Planning Commission, as well as several other commissions, it was agreed that all items from the Comprehensive Plan Update through and including 610 Main Street be moved to the next regular meeting of Council with the anticipation of making appointments in order to reestablish the government so that these items could be addressed as soon as possible.

15. Mayor Harvey agreed to make copies available to everyone regarding DelDot's Transportation Enhancement Plan.

Mayor Harvey asked DelDOT if approval by council was necessary for the transportation plan and they replied by saying that an ordinance needed to be adopted for a portion of the plan. It was agreed that a sample ordinance be obtained and then a workshop for public comment be scheduled.

MOTION BY MR. RAUDENBUSH, SECONDED BY MS. FOX: THAT THE REMAINING PORTION OF OLD BUSINESS BE SCHEDULED FOR A PUBLIC WORKSHOP.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.

Nay – 0.

16. **NEW BUSINESS:**

*Request to Repeal the Rules of Order:

MOTION BY MR. RAUDENBUSH, SECONDED BY MS. FOX: THAT THE RULES OF ORDER BE REPEALED.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.

Nay – 0.

Mr. Grant suggested that they adopt Roberts' Rules of Order. Ms. Fox felt Roberts' Rules were complicated and Ms. Harvey asked for other comments regarding on how Council would like to operate in the interim. Ms. Fox felt it was

appropriate to allow public comment on everything and arguing needed to be curtailed.

Mr. Raudenbush agreed with Ms. Fox in that a public meeting needed to be public.

Mayor Harvey stated that during this interim period, it was the consensus of Council that there would be interaction with the public.

17. ANNOUNCEMENT OF AND ACTION ON THE VACANT COMMISSION POSITIONS.

Mayor Harvey reminded everyone that they had listed the vacancies earlier (see Item 12) and pointed out that she put out sign-up sheets for the vacancies of all the commissions and asked that anyone who would like to be considered for a particular position to please sign up on the appropriate sheet.

It was asked if every commission required a member of council person to be appointed. Mr. Grant responded by saying that not all of them required a member of council but some of them did.

Ms. Fox pointed out that the Historic Commission was made up of one council person, one architect, and three citizens. The Board of Adjustment required an attorney and four citizens.

18. LAWN MAINTENANCE CONTRACT – SKEETER MASSEY.

MOTION BY MR. RAUDENBUSH, SECONDED BY MS. FOX: THAT THE TOWN ENTER INTO A ONE-YEAR CONTRACT WITH MR. MASSEY FOR LAWN MAINTENANCE AS OUTLINED IN THE CONTRACT.

MOTON PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.
Nay – 0.

Ms. Fox suggested that Mr. Massey be contacted to see what he would charge to cut lawns of those property owners who do not maintain them as they should be maintained.

Mayor Harvey suggested that this be discussed at a workshop.

19. **BUDGET WORKSHOP DATE AND TIME:**

MOTION BY MR. RAUDENBUSH, SECONDED BY MS. FOX: THAT THE BUDGET WORKSHOP BE SCHEDULED FOR TUESDAY, MAY 10, 2005 AT 7 PM.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.
Nay – 0.

20. **MOTION BY MR. RAUDENBUSH, SECONDED BY MS. FOX: THAT CHERYL GERKENS BE APPROACHED AGAIN FOR THE TOWN SECRETARY POSITION AND IF SHE IS NOT INTERESTED, THAT JESSICA NORTON BE ASKED TO TEMPORARILY FILL IN UNTIL THE POSITION CAN BE ADVERTISED AND INTERVIEWS BE CONDUCTED.**

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye – Raudenbush, Fox, Harvey.
Nay – 0.

20. **NEXT MEETING'S DATE AND TIME:**

May 2, 2005 at 7 PM.

21. **Meeting adjourned. Time: 9:15 PM.**

Kathy Harvey
Acting Mayor

/sl

Accepted 5/2/05
Morton